SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93979; File No. SR-PEARL-2022-01)

January 14, 2022

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl Equities Fee Schedule

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on January 4, 2022, MIAX PEARL, LLC ("MIAX Pearl" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the fee schedule (the "Fee Schedule") applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange's website at http://www.miaxoptions.com/rule-filings/pearl, at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on

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1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Fee Schedule to (i) adopt new Add and Remove Volume Tiers for executions of orders in securities priced at or above $1.00 that add or remove liquidity from the Exchange; (ii) reduce the Adding Liquidity Displayed Order rebate; (iii) reduce the Adding Liquidity Non-Displayed Order rebate; (iv) increase the Removing Liquidity fee; (v) update Liquidity Indicator Codes and Associated Fees table; (vi) adopt new definitions in the Definitions section; and (vii) adopt new provisions in the General Notes section.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 18% of the total market share of executed volume of equities trading.[4]

[4] Market share percentage calculated as of December 22, 2021. The Exchange receives and processes data made available through consolidated data feeds.

Add Volume Tiers

The Exchange is proposing to introduce a tiered pricing structure applicable to the rebates applied for volume added to the Exchange. Specifically, the Exchange proposes to adopt a new volume-based tier structure, referred to as the Add Volume Tiers, in which the Exchange will provide an enhanced rebate for executions of Added Displayed Volume for Equity Members[5] ("Members") that meet the specified volume thresholds on the Exchange, as described below.

The Exchange proposes to adopt three Add Volume Tiers (Tier 1, Tier 2, and Tier 3) in which it will provide an enhanced rebate per tier. A Member would qualify for an enhanced rebate under Tier 1 by achieving an ADAV[6] of at least 0.07% of the TCV.[7] Members that qualify for Tier 1 would receive an enhanced rebate of $0.0032 per share for executions of Added Displayed Volume for executions of orders in securities priced at or above $1.00 per share across all Tapes. A Member would qualify for an enhanced rebate under Tier 2 by achieving an ADAV of at least 0.10% of the TCV. Members that qualify for Tier 2 would

5 The term "Equity Member" is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

6 As proposed, the term "ADAV" means daily added volume [sic] calculated as the number of shares added per day and "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. The Exchange excludes from its calculation of ADAV and ADV shares added or removed on any day that the Exchange's system experiences a disruptions that lasts for more than 60 minutes during regular trading hours ("Exchange System Disruption"), on any day with a scheduled early market close, and on the "Russell Reconstitution Day" (typically the last Friday in June). Routed shares are not included in the ADAV or ADV calculation.

7 As proposed, the term "TCV" means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any given day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours. On [sic] any day with a scheduled early market close, and on the "Russell Reconstitution Day" (typically the last Friday in June).

receive an enhanced rebate of $0.0035 per share for executions of Added Displayed Volume for executions of orders in securities priced at or above $1.00 per share across all Tapes. A Member would qualify for an enhanced rebate under Tier 3 by achieving an ADAV of at least 0.20% of the TCV. Members that qualify for Tier 3 would receive an enhanced rebate of $0.0036 per share for executions of Added Displayed Volume for executions of orders in securities priced at or above $1.00 per share across all Tapes.

The Exchange believes that basing the qualifications for the Add Volume Tiers on an ADAV threshold that is a percentage of the TCV is appropriate so that the threshold is variable based on overall volumes in the equities industry, which fluctuate month to month.

The proposed Add Volume Tier 1 is designed to encourage Members to maintain or increase their orders that add liquidity on the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. Further, the proposed new Add Volume Tier 1 would provide Members with a higher enhanced rebate ($0.0032) over the new proposed standard rebate of ($0.0029), as further described below, for satisfying more stringent criteria.

The proposed Add Volume Tier 2 is designed to encourage Members to maintain or increase their orders that add liquidity on the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. Further, the proposed new Add Volume Tier 2 would provide Members with a higher enhanced rebate ($0.0035) over Add Volume Tier 1 ($0.0032), for satisfying increasingly more stringent criteria.

The proposed Add Volume Tier 3 is designed to encourage Members to maintain or increase their orders that add liquidity on the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. Further, the proposed new Add Volume Tier 3 would provide Members with a higher enhanced rebate ($0.0036) over Add Volume Tier 2 ($0.0035), for satisfying increasingly more stringent criteria.

For the purposes of calculating ADAV the Exchange proposes to exclude from the calculation: (1) any Exchange System Disruption Days; (2) any day with a scheduled early market close; and (3) the Russell Reconstitution day, which typically occurs on the last Friday in June. The Exchange believes that the Exchange system disruptions could preclude Members from participating on the Exchange to the extent that they might have otherwise participated on such days, and thus, the Exchange believes it is appropriate to exclude such days when determining whether a Member qualifies for an Add Volume Tier to avoid penalizing Members that might otherwise have met the applicable volume threshold. Additionally, the Exchange believes that scheduled early market closes, which typically are the day before, or the day after, a holiday, may preclude some Members from submitting orders to the Exchange at the same level that they might otherwise. For similar reasons, the Exchange believes it is appropriate to exclude the Russell Reconstitution Day, as the Exchange believes the change to normal trading activity as a result of the Russell Reconstitution may skew the calculation of ADAV and TCV. The

Exchange also proposes to specify that routed shares are not included in the calculation of ADAV.[8]

The Exchange will continue to provide a rebate of 0.05% of the total dollar value of the transaction for executions of orders that add liquidity to the Exchange in securities priced below $1.00 per share. Thus, as under the Exchange's current pricing, the same rebate would be applied to all Members for executions of orders that add liquidity on the Exchange in securities priced below $1.00 per share.

The Exchange notes that the rebates provided for executions of Added Displayed Volume under the Add Volume Tiers ($0.0032 in Tier 1; $0.0035 in Tier 2; and $0.0036 in Tier 3), are comparable to, and competitive with, the rebates for executions of liquidity adding displayed orders provided by at least one other exchange under similar volume-based tiers.[9]

The Exchange believes that the proposed tiered pricing structure provides an incentive for Members to strive for higher ADAV on the Exchange to receive the proposed enhanced rebate for executions of Added Displayed Volume. As such, the proposed Add Volume Tiers are designed to encourage Members that provide liquidity on the Exchange to maintain or increase their order flow, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue.

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8 The Exchange notes that excluding routed shares from the calculations of ADAV and ADV is also consistent with the practice of other exchanges when calculating ADAV and ADV. See, e.g., the Cboe BZX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/).

9 See MEMX, LLC ("MEMX") equities trading fee schedule on its public website (available at https://info.memxtrading.com/fee-schedule/) which reflects rebates provided under "Liquidity Provision Tiers" = tiers based on a member achieving certain ADAV thresholds ranging from $0.0031 to $0.00335 [sic] per share for adding displayed liquidity to the MEMX exchange.

Reduced Standard Rebate for Added Displayed Volume

The Exchange proposes to reduce the standard rebate for executions of Added Displayed Volume. Currently, the Exchange provides a standard rebate of $0.0032 per share for executions of Added Displayed Volume in Tapes A and C, and $0.0035 per share for executions of Added Displayed Volume in Tape B. The Exchange now proposes to reduce the standard rebate for executions of Added Displayed Volume to $0.0029 per share for all Tapes.[10] The Exchange notes that executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange will continue to receive the standard rebate applicable to such executions (i.e., 0.05% of the total dollar value of the transaction).

The purpose of reducing the standard rebate for executions of Added Displayed Volume is for business and competitive reasons, as the Exchange believes the reduction of such rebate would decrease the Exchange's expenditures with respect to transaction pricing and would also offset some of the costs associated with the proposed enhanced rebates for executions for Members that qualify for an Add Volume Tier, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange notes that despite the modest reduction proposed herein, the proposed standard rebate for execution of Added Displayed Volume (i.e., $0.0029 per share) remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity.[11]

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10 The standard pricing for executions of Added Displayed Volume is referred to by the Exchange on its Fee Schedule in section 1)a) Standard Rates.

11 See e.g., the Nasdaq PSX equities trading fee schedule on its public website (available at http://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing), which reflects a standard rebate of $0.0020 per share to add displayed liquidity in securities priced at or above $1.00 per share; see also the NYSE ARCA equities trading fee schedule on its public website (available at https://www.nyse.com/publicdocs/nyse/markets/nyse-

The Exchange proposes to reduce the standard rebate to $0.0021 per share for executions of Added Non-Displayed Volume. Currently, the Exchange provides a standard rebate of $0.0025 per share for executions of non-displayed orders in securities priced at or above $1.00 per share that add liquidity to the Exchange. The Exchange notes that executions of orders in securities priced below $1.00 per share that add non-displayed liquidity to the Exchange will continue to receive the standard rebate applicable to such executions (i.e., 0.05% of the total dollar value of the transaction).

The purpose of reducing the standard rebate for executions of Added Non-Displayed Volume is for business and competitive reasons, as the Exchange believes the reduction of such rebate would decrease the Exchange's expenditures with respect to transaction pricing and would also offset some of the costs associated with the proposed enhanced rebates for executions for Members that qualify for an Add Volume Tier, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange notes that despite the modest reduction proposed herein, the proposed standard rebate for execution of Added Non-Displayed Volume (i.e., $0.0021 per share) remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity.[12]

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arca/NYSE_Arca_Marketplace_Fees.pdf), which reflects a standard rebate of $0.0020 per share to add displayed liquidity in securities priced at or above $1.00 per share.

12 See e.g., the Nasdaq PSX equities trading fee schedule on its public website (available at http://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing), which reflects a standard rebate of $0.0015 per share to add non-displayed liquidity in securities priced at or above $1.00 per share; see also the Cboe BZX equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/), which reflects a standard rebate of $0.0010 per share to add non-displayed liquidity in securities priced at or above $1.00 per share.

Remove Volume Tiers

The Exchange is proposing to introduce a tiered pricing structure applicable to the fees charged for executions of Removed Volume on the Exchange. Specifically, the Exchange proposes to adopt a new volume-based tier structure, referred to as the Remove Volume Tiers, in which the Exchange will charge a fee that is lower than the standard fee for executions of Removed Volume for Members that meet the specified volume thresholds on the Exchange, as described below.

Currently, the Exchange charges a standard fee of $0.0025 per share for all executions of Removed Volume, which the Exchange is proposing to increase to $0.0029, as further described below. The Exchange now proposes to adopt two new Remove Volume Tiers in which it will charge a lower fee of $0.0027 per share for executions of Removed Volume for Members that qualify for Tier 1 by achieving an ADV[13] that is equal to or greater than 0.10% of TCV; and a lower fee of $0.00265 per share for Members that qualify for Tier 2 by achieving an ADV that is equal to or greater than 0.15% of TCV. As proposed, the ADV will be calculated on a monthly basis, and Members that qualify for the Remove Volume Tier discount by achieving one of the thresholds specified above in a particular month will be charged the proposed lower fee according to the threshold tier achieved instead of the standard fee of $0.0029 per share, for all executions of Removed Volume in that month.

The Exchange will continue to charge Members a fee of 0.05% of the total dollar value of the transaction for executions of orders that remove liquidity from the Exchange in securities priced below $1.00 per share. Thus, as under the Exchange's current pricing, the same fee would

[13] See supra note 6.

be applied to all Members for executions of orders that remove liquidity from the Exchange in securities priced below $1.00 per share.

For the purposes of calculating ADV the Exchange proposes to exclude from the calculation: (1) any Exchange System Disruption Days; (2) any day with a scheduled early market close; and (3) the Russell Reconstitution day, which typically occurs on the last Friday in June. The Exchange believes that Exchange system disruptions could preclude Members from participating on the Exchange to the extent that they might have otherwise participated on such days, and thus, the Exchange believes it is appropriate to exclude such days when determining whether a Members qualifies for a Remove Volume Tier to avoid penalizing Members that might otherwise have met the applicable volume threshold. For similar reasons, the Exchange believes it is appropriate to exclude days with a scheduled early market close, which are typically the day before, or the day after, a holiday, as the early market close may preclude some Members from submitting orders to the Exchange at the same level that they might otherwise. Additionally, the Exchange believes excluding the Russell Reconstitution day is appropriate as the change to normal trading activity as a result of the Russell Reconstitution may skew the calculation of ADV and TCV. The Exchange also proposes to specify that routed shares are not included in the calculation of ADV.[14]

The Exchange believes that the proposed Remove Volume Tier provides an incentive for Members to strive for higher ADV on the Exchange in order to qualify for the proposed lower fee for executions of Removed Volume. As such, the proposed Remove Volume Tier is designed to encourage Members to maintain or increase their order flow directed to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market

14 See supra note 8.

participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed lower fees for executions of Remove Volume applicable to Members that qualify for one of the Remove Volume Tiers (i.e., $0.0027 or $0.00265) is comparable to, and competitive with, the fees charged for executions of liquidity-removing orders charged by at least one other exchange under similar volume-based tiers.[15]

Increase Standard Fee for Removed Volume

In connection with the proposed adoption of the Remove Volume Tiers, the Exchange also proposes to increase the standard fee charged for executions of Removed Volume. Currently, the Exchange charges a standard fee of $0.0025 per share for executions of Removed Volume. The Exchange now proposes to increase the standard fee charged for executions of Removed Volume to $0.0029 per share.[16]

The purpose of increasing the standard fee for executions of Removed Volume is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would generate additional revenue to offset some of the costs associated with the Exchange's proposed pricing structure, which provides various rebates for liquidity-adding orders and discounted fees for liquidity-removing orders, and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the modest increase proposed herein, the Exchange's proposed standard fee for executions of Removed Volume ($0.0029) remains competitive with

15 See the Cboe EDGX equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/) which reflects fees charged under "Remove Volume Tiers" – tiers based on a member achieving certain step-up ADAV and ADV volume thresholds of $0.00275 per share for removing volume from the Cboe EDGX exchange.

16 The proposed pricing is referred to by the Exchange on the Fee Schedule under the existing description "Removing Liquidity" in Section 1)a) Standard Rates.

the standard fee to remove liquidity in securities priced at or above $1.00 per share charged by other equity exchanges.[17]

Liquidity Indicator Codes and Associated Fees Table Conforming Changes

In conjunction with the Exchange's proposal to (i) reduce the rebate for Displayed Orders that Add Liquidity from $0.0032 for Tapes A and C, and $0.0035 for Tape B, to $0.0029 for all tapes; (ii) reduce the rebate for Non-Displayed Orders that Add Liquidity from $0.0025 to $0.0021; and (iii) increase the fee for Removing Liquidity from $0.0025 to $0.0029, the Exchange now proposes to update the Liquidity Indicator Codes and Associated Fees table to reflect the aforementioned changes. The Exchange proposes to update the liquidity indicator codes as follows:

- Liquidity indicator code AA, Adds Liquidity, Displayed Order (Tape A). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code AA would receive a rebate of $0.0029 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.
- Liquidity indicator code AB, Adds Liquidity, Displayed Order (Tape B). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code AB would receive a rebate of $0.0029 per share in

17 See e.g., the Cboe BZX equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/) which reflects a standard fee of $0.0030 per share to remove liquidity in securities priced at or above $1.00 per share; and the Cboe EDGX equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/) which reflects a standard fee of $0.0030 per share to remove liquidity in securities priced at or above $1.00.

securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.

- Liquidity indicator code AC, Adds Liquidity, Displayed Order (Tape C). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code AC would receive a rebate of $0.0029 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.
- Liquidity indicator code Aa, Adds Liquidity, Non-Displayed Order (Tape A). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code Aa would receive a rebate of $0.0021 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.
- Liquidity indicator code Ab, Adds Liquidity, Non-Displayed Order (Tape B). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code Ab would receive a rebate of $0.0021 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.
- Liquidity indicator code Ac, Adds Liquidity, Non-Displayed Order (Tape C). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code Ac would receive a rebate of $0.0021 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.

- Liquidity indicator code Ar, Retail Order, Adds Liquidity, Non-Displayed Order (All Tapes). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code Ar would receive a rebate of $0.0021 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.
- Liquidity indicator code RA, Removes Liquidity, Displayed Order (Tape A). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code RA would be subject to a fee of $0.0029 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.
- Liquidity indicator code RB, Removes Liquidity, Displayed Order (Tape B). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code RB would be subject to a fee of $0.0029 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.
- Liquidity indicator code RC, Removes Liquidity, Displayed Order (Tape C). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code RC would be subject to a fee of $0.0029 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.
- Liquidity indicator code RR, Retail Order, Removes Liquidity, Displayed Order (All Tapes). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code RR would be subject to a fee

of $0.0029 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.

- Liquidity indicator code Ra, Removes Liquidity, Non-Displayed Order (Tape A). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code Ra would be subject to a fee of $0.0029 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.
- Liquidity indicator code Rb, Removes Liquidity, Non-Displayed Order (Tape B). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code Rb would be subject to a fee of $0.0029 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.
- Liquidity indicator code Rc, Removes Liquidity, Non-Displayed Order (Tape C). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code Rc would be subject to a fee of $0.0029 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.
- Liquidity indicator code Rr, Retail Order, Removes Liquidity, Non-Displayed Order (All Tapes). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code Rr would be subject to a fee of $0.0029 per share in securities priced at or above $1.00 and 0.05% of the transaction's dollar value in securities priced below $1.00.

Definitions

The Exchange proposes to add definitions of the terms ADAV, ADV, and TCV which are consistent with the definitions of those terms above to the "Definitions" section of the Fee Schedule in connection with the proposed Add and Remove Volume Tiers. The Exchange notes that the proposed definitions of ADAV, ADV, and TCV are substantially similar to the definitions of those terms used by at least one other exchange on its fee schedule in connection with similar volume-based pricing tiers.[18]

Allow Members to Aggregate Volume for Pricing Tiers

The Exchange proposes to include a provision in its definition of ADAV and ADV to allow affiliated Members to aggregate their volume for purposes of the Exchange's determination of ADAV and ADV with respect to pricing tiers if such Members provide prior notice to the Exchange. Specifically, to the extent that two or more affiliated companies maintain separate memberships with the Exchange and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange would permit such Members to count aggregate volume of such affiliates in calculating ADAV and ADV. As proposed, the Exchange will verify such affiliation using a Member's Form BD, which lists control affiliates. The purposes of this proposed change is to avoid disparate treatment of firms that have divided business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity, as allowing affiliated Member firms to count their aggregate volume in calculating ADAV and ADV would produce the same result for purposes of the Exchange's

18 See e.g., the Cboe EDGX Exchange, Inc. ("Cboe EDGX") equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/).

volume-based tier pricing as if such affiliated Member firms were instead organized as a single corporate entity. The Exchange notes that this proposed change is consistent with the practice of at least one other exchange with respect to the aggregation of affiliated member firms' volume for purposes of ADAV and ADV calculations with respect to pricing tiers.[19]

General Notes

The Exchange proposes to adopt two new provisions to the "General Notes" section of its fee schedule. The Exchange proposes to add a provision that states that, to the extent a Pearl Equity Member does not qualify for any tiers contained herein, the rates listed in the "Liquidity Indicator Codes and Associated Fees" table shall apply. Additionally, the Exchange proposes to add a provision that states that, to the extent a Pearl Equity Member qualifies for higher rebates and/or lower fees than those provided by a tier for which such Member qualifies, the higher rebates and/or lower fees shall apply. These provisions are intended to provide additional clarity regarding the operation of the Fee Schedule.

Implementation

The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on January 3, 2022.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[20] in general, and furthers the objectives of Section 6(b)(4) of the Act[21] in particular, in that it is an equitable allocation of reasonable fees and other charges among its

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19 Id.

20 15 U.S.C. 78f(b).

21 15 U.S.C. 78f(b)(4).

Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[22] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 18% of the total market share of executed volume of equities trading.[23] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents less than 1% of the overall market share. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission

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22 15 U.S.C 78f(b)(5).

23 See supra note 4.

highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[24]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality to the benefit of all Members and market participants.

Add Volume Tier

The Exchange believes that the proposed Add Volume Tier is reasonable because it would provide Members with an additional incentive to achieve certain volume thresholds on the Exchange. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[25] and are reasonable, equitable, and not unfairly discriminatory because

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24 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

25 See Cboe EDGX equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/); Cboe BZX equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/); and MEMX equities trading fee schedule on its public website (available at https://info.memxtrading.com/fee-schedule/).

they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes the proposed Add Volume Tiers are equitable and not unfairly discriminatory for these same reasons, as they are available to all Members and are designed to encourage Members to maintain or increase their orders that add liquidity on the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. Moreover, the Exchange believes the proposed Add Volume Tiers are a reasonable means to incentivize such increased activity, as it provides Members with additional opportunities to qualify for an enhanced rebate for executions of Added Displayed Volume.

Additionally, the Exchange believes that the proposed enhanced rebate for executions of Added Displayed Volume under Add Volume Tier 1 (i.e., $0.0032 per share) is reasonable, in that it represents only a modest increase from the proposed standard rebate for such executions (i.e., of $0.0029 per share). Thus, the Exchange believes that it is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory to provide an enhanced rebate for executions of Added Displayed Volume to Members that qualify for Tier 1 in comparison with the standard rebate for such executions in recognition of the benefits that such Members provide to the Exchange and market participants, as described above, particularly as the magnitude of the enhanced rebate is not unreasonably high and is, instead, reasonably related to the enhanced market quality it is designed to achieve.

The Exchange believes the proposed change for the required criteria for Add Volume Tier 1 as an ADAV of at least 0.07% of TCV is reasonable because, as noted above, the Exchange believes that basing qualification for the Add Volume Tiers on an ADAV threshold that is a percentage of the TCV, rather than an ADAV threshold that is a specified number of shares, is appropriate so that the threshold is variable based on overall volumes in the equities industry, which fluctuate from month to month.

The Exchange believes the proposed change for the required criteria for Add Volume Tier 2 as an ADAV of at least 0.10% of TCV is reasonable because, as noted above, the Exchange believes that basing qualification for the Add Volume Tiers on an ADAV threshold that is a percentage of the TCV, rather than an ADAV threshold that is a specified number of shares, is appropriate so that the threshold is variable based on overall volumes in the equities industry, which fluctuate from month to month.

The Exchange believes the proposed change for the required criteria for Add Volume Tier 3 as an ADAV of at least 0.20% of TCV is reasonable because, as noted above, the Exchange believes that basing qualification for the Add Volume Tiers on an ADAV threshold that is a percentage of the TCV, rather than an ADAV threshold that is a specified number of shares, is appropriate so that the threshold is variable based on overall volumes in the equities industry, which fluctuate from month to month.

The Exchange further believes the proposed new criteria is equitable and non-discriminatory because all Members will continue to be eligible to qualify for Add Volume Tier 3 and have the opportunity to receive the corresponding enhanced rebate if such criteria is achieved. The Exchange notes that should a Member not meet the proposed new criteria for Add Volume Tier 3, such member would merely not receive that corresponding enhanced rebate, and such Member would still have an opportunity to qualify for an enhanced rebate, although slightly lower than Tier 3, for executions of Added Volume under the proposed Add Volume Tier 2, which has slightly less stringent criteria than Add Volume Tier 3, as described above. Members that do not meet the proposed new criteria for Add Volume 2 would still have an opportunity to qualify for an enhanced rebate, although slightly lower than Add Volume Tier 2, for executions of Added Volume under the proposed Add Volume Tier 1, which has slightly less stringent criteria than Add Volume Tier 2, as described above.

The Exchange further believes that the proposed new criteria for Add Volume Tier 1, Add Volume Tier 2, and Add Volume Tier 3, are reasonable, in that the proposed new criteria for Add Volume Tier 2 is incrementally more difficult to achieve than that of Add Volume Tier 1, and the proposed new criteria for Add Volume Tier 3 is incrementally more difficult to achieve than Add Volume Tier 2 thus, Add Volume Tier 3 appropriately offers the highest rebate commensurate with the corresponding highest volume threshold. Similarly, the Exchange believes that the proposed new criteria for Add Volume Tier 2 is incrementally more difficult to achieve than that for Add Volume Tier 1, and thus Add Volume Tier 2 appropriately offers a higher rebate commensurate with the higher volume threshold. Therefore, the Exchange believes the Add Volume Tiers, as proposed, are consistent with an equitable allocation of fees and rebates, as the more stringent criteria correlates with the corresponding tier's higher rebate. The Exchange further believes that the rebates provided under the Add Volume Tiers, as proposed, (i.e., \$0.0032 for Tier 1; \$0.0035 for Tier 2; and \$0.0036 for Tier 3) are reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory to pay such higher rebates for executions of Added Displayed Volume to Members that qualify for an Add Volume Tier in comparison with the standard rebate in recognition of the benefits to the Exchange and market participants described above, particularly as the magnitude of the enhanced rebate is not unreasonably high and is, instead, reasonably related to the enhanced market quality it is designed to achieve. Additionally, the Exchange believes the proposed rebates are reasonable as such rebates are comparable to, and competitive with, the rebates for executions of liquidity-adding displayed orders provided by at least one other exchange under similar volume-based tiers.[26]

Additionally, the Exchange believes that excluding Exchange System Disruption Days, any day with a scheduled early market close, and the Russell Reconstitution Day when determining whether a Member qualifies for the proposed Add Volume Tier during a month is reasonable, equitable, and non-discriminatory because, as explained above, the Exchange believes doing so would help to avoid penalizing Members that might otherwise have met the requirements to qualify for the proposed Add Volume Tier due to Exchange system disruptions, reduced trading hours, and/or abnormal market conditions. The Exchange notes that the exclusion of the Exchange System Disruption Days, any day with a scheduled early market close, and the Russell Reconstitution Day is consistent with the methodology used by at least one other exchange when calculating certain member trading and other volume metrics for purposes of determining whether members qualify for certain pricing incentives, including calculations of ADAV for Volume Tiers specifically.[27]

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[26] See the Cboe BZX Exchange, Inc. ("Cboe BZX") equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/) which reflects rebates provided under "Add Volume Tiers" – tiers based on a member achieving certain ADAV thresholds – ranging from $0.0020 to $0.0031 per share for adding displayed liquidity to the Cboe BZX exchange.

[27] See e.g., Cboe BZX equities trading fee schedule on its public website available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/),

Reduce Standard Rebate for Added Displayed and Non-Displayed Volume

The Exchange believes that the proposed reduced standard rebate for executions of Added Displayed Volume ($0.0029 per share) and Added Non-Displayed Volume ($0.0021 per share) is reasonable and appropriate because it represents a modest decrease from the current standard rebate for executions of Added Displayed Volume and Added Non-Displayed Volume, and remains competitive with the standard rebates provided by at least one other exchange for orders in securities priced at or above $1.00 per share that add liquidity.[28] The Exchange further believes that the proposed reduced standard rebate for executions of Added Displayed Volume and Added Non-Displayed Volume are equitably allocated and not unfairly discriminatory because each will apply equally to all Members.

Remove Volume Tier

The Exchange believes that the proposed Remove Volume Tier is reasonable because it would provide Members with an additional incentive to achieve certain volume thresholds on the Exchange. Volume-based incentives and discounts have been widely adopted by exchanges,[29] and are reasonable, equitable, and not unfairly discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes the proposed Remove Volume Tier is equitable and not unfairly discriminatory for these same reasons, as it is

[28] See MEMX Exchange equities trading fee schedule on its public website (available at https://info.memxtrading.com/fee-schedule/) which reflects a rebate of $0.0028 for Added Displayed Volume and a rebate of $0.0020 for Added Non Displayed Volume.

[29] See supra note 25.

open to all Members and is designed to encourage Members to maintain or increase their order flow directed to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. Moreover, the Exchange believes the proposed Remove Volume Tier is a reasonable means to incentivize such increased activity, as it provides two different thresholds that a Member may achieve by increasing their ADV to an amount equal to or greater than the specified TCV threshold.

Additionally, the Exchange believes the proposed lower fee for executions of Removed Volume for a qualifying Member (i.e., \$0.0027 and \$0.00265 dependent upon the Tier) is reasonable, in that it represents only a modest decrease from the proposed standard fee for such executions (i.e., \$0.0029 per share). The Exchange believes that it is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory to charge such lower fees for executions of Removed Volume to Members that qualify for the Remove Volume Tier in comparison with the standard fee in recognition of the benefits that such Members provide to the Exchange and market participants, as described above, particularly as the magnitude of the lower fee is not unreasonably high and is, instead, reasonably related to the enhanced market quality it is designed to achieve. Further, as noted above, competing exchanges offer tiered pricing structures similar to the proposed Remove Volume Tier, including schedules of rebates and fees that apply based upon Members achieving certain volume thresholds, and the Exchange believes the proposed Remove Volume Tier's criteria are reasonable when compared to such tiers provided for by other exchanges. For example, Cboe EDGX charges lower fees for removing volume from the Cboe EDGX exchange under its "Remove Volume Tiers" at \$0.00275 per share, compared to its standard fee of \$0.0030 per share, but requires different, but similar, criteria than the Exchange's proposed Remove Volume Tier, which are also based upon a Member's volume.[30]

The Exchange further believes the proposed Remove Volume Tier is fair, equitable and not unfairly discriminatory because it is available to all Members. Further, the proposed Remove Volume Tier is comparable to the fees charged for executions of liquidity-removing orders charged by Cboe EDGX under similar volume based tiers.[31]

The Exchange believes that adding the proposed definitions for the terms, ADAV, ADV, and TCV, is reasonable, equitable, and non-discriminatory because such definitions are substantially similar to the definitions of such terms used by other exchanges in connection with similar volume-based pricing tiers, as described above,[32] and their placement on the Fee Schedule is designed to ensure that the Fee Schedule is as clear and understandable as possible with respect to applicable pricing. Similarly, the Exchange believes that specifying that routed shares are not included in the calculation of ADAV or ADV and that Exchange System Disruptions, any day with a scheduled early market close, and the Russell Reconstitution Day are excluded from the calculation of ADAV, ADV, and TCV is reasonable, equitable, and non-discriminatory as this further clarifies the Exchange's calculation practices with respect to its volume-based pricing tiers, and such practices are consistent with those of at least one other exchange in this regard.[33]

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30 See Cboe EDGX equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/).

31 Id.

32 Id.

33 See Cboe EDGX equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/).

Increased Standard Fee for Removed Volume

The Exchange believes that the proposed change to increase the standard fee for executions of Removed Volume is reasonable, equitable, and consistent with the Act because such a change is designed to generate additional revenue and decrease the Exchange's expenditures with respect to transaction pricing in order to offset some of the costs associated with the various rebates provided by the Exchange for liquidity-adding orders and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity, as described above. The Exchange also believes the proposed increased standard fee for executions of Removed Volume is reasonable and appropriate because it represents a modest increase from the current standard fee and, as noted above, remains lower than, and competitive with, the standard fee charged by several other exchanges to remove liquidity in securities priced at or above $1.00 per share.[34] The Exchange further believes that the proposed increased standard fee for executions of Removed Volume is equitably allocated and not unfairly discriminatory because it will apply to all Members.

Allow Members to Aggregate Volume for Pricing Tiers

As noted above, the proposed language permitting aggregation of volume amongst affiliated Members for purposes of the ADAV and ADV calculations is intended to avoid disparate treatment of firms that divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single

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34 See the MEMX equities trading fee schedule on its public website (available at https://info.memxtrading.com/fee-schedule/) which reflects a standard fee of $0.0029; Cboe EDGX equities trading fee schedule on it its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/) which reflects a standard fee of $0.0030; and Cboe BZX equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/) which reflects a standard fee of $0.0030.

corporate entity, as allowing affiliated Member firms to count their aggregate volume in calculating ADAV and ADV would produce the same result for purposes of the Exchange's volume-based tier pricing as if such affiliated Member firms were instead organized as a single corporate entity. By way of example, subject to appropriate information barriers, many firms that are Members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange. Absent the proposed policy, such corporate affiliates would not receive the same treatment as firms operating similar business lines within a single entity that is a Member of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure. Moreover, as noted above, this proposed policy is consistent with the practice of other exchanges with respect to the aggregation of affiliated Members' volume for purposes of determining ADAV and ADV with respect to pricing tiers.[35]

Conforming Changes to Liquidity Indicator Codes

The Exchange believes its proposal to decrease the rebate provided for Displayed Orders that add liquidity in securities priced at or above $1.00 from $0.0032 in Tapes A and C, and $0.0035 in Tape B, to $0.0029 per share is reasonable and equitably allocated among all

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35 See Cboe EDGX equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/).

Members of the Exchange. Liquidity indicator codes AA, AB, and AC are appended to orders that add displayed non-retail liquidity. The Exchange believes that the proposed decrease to $0.0029 per share is reasonable in that it represents a modest decrease from the current rebate for such executions.

Additionally, the Exchange believes its proposal to decrease the rebate provided for Non-Displayed Orders that add liquidity in securities priced at or above $1.00 from $0.0025 to $0.0021 per share is reasonable and equitably allocated among all Members of the Exchange. Liquidity indicator codes Aa, Ab, Ac, and Ar are appended to orders that add non-displayed liquidity. The Exchange believes its proposal is equitable and not unfairly discriminatory as it will apply to all Members equally. Additionally, the Exchange believes its proposed change is reasonable as the Exchange is also proposing new Add Volume Tiers by which a Member can achieve rebates of $0.0032, $0.0035, and $0.0036 per share for securities priced at or above $1.00 upon satisfying certain criteria.

The Exchange believes its proposal to increase the fee applied for orders that remove liquidity in securities priced at or above $1.00 per share is reasonable and equitably allocated among all Members of the Exchange. The Exchange believes its proposal to update the Liquidity Indicator Codes and Associated Fees table to reflect the new rate of $0.0029 per share for securities priced at or above $1.00 with liquidity indicator codes RA, RB, RC, RR, Ra, Rb, Rc, and Rr is equitable and reasonable because it will apply equally to all Members of the Exchange. Additionally, the Exchange believes its proposed change is reasonable as the Exchange is also proposing new Remove Volume Tiers by which a Member can achieve reduced fees of $0.0027 or $00.0265 per share for securities priced at or above $1.00 upon satisfying certain criteria.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed change would encourage Members to maintain or increase their order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[36]

[36] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396 (June 29, 2005).

Intramarket Competition

The Exchange believes that the proposed changes would incentivize market participants to direct order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all Members. The opportunity to qualify for the Add Volume Tiers and thus receive the corresponding enhanced rebate for executions of Added Displayed Volume would be available to all Members that meet the associated requirements in any month. Further, as noted above, the Exchange believes that the proposed criteria for the Add Volume Tiers are reasonably related to the enhanced market quality that such tiers are designed to promote.

The opportunity to qualify for the Remove Volume Tier, and thus receive the proposed lower fee for executions of Removed Volume, would be available to all Members that meet the associated volume requirement in any month. The Exchange believes that meeting the volume requirement of the Remove Volume Tier is attainable for market participants, as the Exchange believes the thresholds are relatively low and reasonably related to the enhanced liquidity and market quality that the Remove Volume Tier is designed to promote. Similarly, the proposed increased standard fee for executions of Removed Volume and the ability for Members to aggregate volume amongst affiliated Member firms for purposes of the Exchange's determination of ADAV and ADV with respect to pricing tiers would apply equally to all Members. As such, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange believes its proposal will benefit competition as the Exchange operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than 18% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of Removed Volume, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposed changes are competitive proposals through which the Exchange is seeking to encourage additional order flow to the Exchange and to generate additional revenue to offset some of the costs associated with the Exchange's current pricing structure and its operations generally, and such proposed rates applicable to executions of Added and Removed Volume are comparable to, and competitive with, rates charged by other exchanges.[37]

Additionally, the proposed change to allow affiliated Members to aggregate their volume for purposes of the Exchange's determination of ADAV and ADV with respect to pricing tiers is designed to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity, which is consistent with the practice of other exchanges, as discussed above.[38] Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar volume-based incentives and pricing with respect to executions of Removed Volume and volume aggregation amongst affiliates with respect to pricing tiers.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[39] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. circuit stated: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national

37 See supra notes 9, 11, 12, 15, 17, 26, 28, and 34.

38 See supra note 18.

39 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .".[40] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[41] and Rule 19b-4(f)(2)[42] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[40] NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

[41] 15 U.S.C. 78s(b)(3)(A)(ii).

[42] 17 CFR 240.19b-4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PEARL-2022-01 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PEARL-2022-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2022-01, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier
Assistant Secretary

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[43] 17 CFR 200.30-3(a)(12).